THE HON'BLE Mr. JUSTICE N.V. RAMANA

Writ Petition No.21721 of 1997

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Dated: February 1, 2006

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Between:

Executive Engineer, Vamsadhara Project,

Hiramandalam, Srikakulam District.

… Petitioner

And

D. Venkati, Kittalapadu (v)

Srikakulam District, and another.

… Respondents

Order:

Petitioner seeks a Writ of Certiorari calling for the records pertaining to I.D.No.49/92 dated 30-09-1996 on the file of Respondent No.2 and quash the same as illegal and opposed to the Industrial Disputes Act.

2. Petitioner submits that Respondent No.1 was engaged as casual labour from 01-02-1997 to 02-09-1978 for a period of 319 days. Respondent No.1 alleged that he was paid Rs.700/- per month but it is not true as verified from the N.M.R. vouchers, he was paid Rs.5.00 to Rs.5.15 Ps. per day according to the minimum wages fixed by the Collector, Srikakulam. Later, after lapse of several years, Respondent No.1 approached Respondent No.2 raising a dispute that his services were terminated illegally. Respondent No.2, the Labour Court, passed an award dated 30-09-1996, holding as under. -

> "In the result, award is passed holding that the termination of the workman Sri D. Venkati, Vamsadhara Project, Hiramandalam, is not justified and the management is directed to reinstate the petitioner without back wages and without continuity of service, within a period of two months from the date of receipt of a copy of this award by the management".

3. The only contention advanced by the learned counsel for the petitioner is that there is abnormal delay on the part of Respondent No.1 in approaching the Labour Court and hence, the Labour Court ought not to have passed the said order.

4. Learned counsel appearing on behalf of Respondent No.1 contended that the order passed by the Labour Court is in accordance with the established principles of law and there are no reasons to interfere with the said order. He further contends that the Labour Court, disbelieved the statement of M.W.1 that Respondent No.1 worked intermittently in the year 1977 and 1988 as NMR, holding that no record is produced to prove that Respondent No.1 did not work continuously during this period. He further contends that M.W.1. stated in his cross-examination that they did not file muster rolls and vouchers as they are not asked to produce the same, but it is the duty of the management to produce the muster rolls and vouchers for the period concerned when they dispute continuous service by the workman during the period. Hence, the Labour Court had rightly held that adverse inference has to be drawn against the management and ordered reinstatement of the workman.

5. Heard the learned counsel appearing on either side and perused the material on record.

6. The parameters and scope of judicial review of this Court under Article 226 of the Constitution of India to issue a Writ of Certiorari are limited to – firstly to correct errors of jurisdiction when the inferior Court or Tribunal acts without jurisdiction or in excess or fails to exercise it, secondly correct errors of law apparent on the face of the record, and thirdly correct and interfere with the findings that are based on suspicion, conjectures or surmises or no reason. The law is well settled that this Court does not act as an appellate authority and reappraise the evidence while exercising certiorari jurisdiction. It is within these parameters, the impugned award of the Labour Court, is to be examined.

7. It is surprising to note that the learned counsel for the petitioner-management filed a counter before the Labour Court stating that the workman worked from 01-02-1977 to 20-11-1977, i.e. 287 days. In view of the admission of the petitioner-management

in their counter before the Labour Court that the respondent has worked for more than 240 days in a year, the action of the petitioner in retrenching the workman is illegal. Moreover, the Labour Court held that M.W.1. stated in his cross-examination that they did not file muster rolls and vouchers as they are not asked to produce the same, but it is the duty of the management to produce the muster rolls and vouchers for the period concerned when they dispute continuous service by the workman during the period. Hence, the Labour Court had rightly held that adverse inference has to be drawn against the management and ordered reinstatement of the workman. I see no reason whatsoever in interfering with the impugned order.

8. There are no merits in the writ petition and the same is accordingly dismissed. No costs.

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N.V. RAMANA, J.

February 1, 2006

MRR

directing that the petitioner be reinstated within two months from the date of receipt of that order. It is the case of the petitioner that Respondent No.1 worked only 287 days in one calendar year during 1977 and for 32 days in 1978 in broken periods; hence he is not entitled for regularization. Petitioner states that N.M.R. would be appointed as and when there is work, and after completion of work, the job of an N.M.R. comes to an end, and the muster roll would show that N.M.R.s are not available throughout the year, but they work in break periods. Respondent No.1, who worked during the years 1977 and 1978 for 319 days, after a lapse of 14 years approached the Labour Court, without making any representation in the meantime. Hence, Respondent No.2 ought to have dismissed the claim of Respondent No.1.

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